Supreme Court, U.S.
FILED
MAY 19 1951
CHARLES ELMORE CROPLEY
CLERK

3424
53
UNIO-U

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. [redacted] 64

UNION STARCH & REFINING CO., A CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

HARRY T. ICE,
GEORGE P. RYAN,
Attorneys for Union Starch & Refining Co.

ROSS, MCCORD, ICE & MILLER,
Indianapolis, Indiana,
Of Counsel.

THE BUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

INDEX.

	PAGE
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Specification of errors to be urged	4
Reasons for granting the writ	5
Conclusion	17
Appendix A—Statutes	19
Appendix B—Congressional History	21

CITATIONS.

Cases.

Ford Motor Company of Canada (Windsor, Ont.) and the UAW-CIO, 1 Labor Arbitration Reports 439, 17 Lab. Rel. Ref. Man. 2782 (Arb. January 29, 1946)	11
Markham v. Cabell, 326 U. S. 404 (1945)	9
Securities Exchange Commission v. Chenery Corp., 318 U. S. 80 (1943)	15

Statutes.

Labor Management Relations Act, 1947, Section 8(a)(3) (29 U. S. C. A. 1950 Cum. Supp. Section 158(a)(3))	5, 7, 14, 19
Labor Management Relations Act, 1947, Section 10(e), (29 U. S. C. A. 1950 Cum. Supp. Section 160(e))	16

Text Material.

Fifteenth Annual Report of the National Labor Relations Board 6

Fourteenth Annual Report of the National Labor Relations Board 6

Millis & Brown, From the Wagner Act to Taft-Hartley (1950) 6

Millis & Montgomery, Organized Labor (1945)..... 5

Rubenstein, Union Security Provisions in Agreements, 1949-50, 71 Monthly Labor Review 224 (1950)..... 6

Congressional Material.

S. 1126, 80th Congress, 1st Sess. (1947)..... 21

Sen. Rep. No. 105, 80th Cong. 1st Sess. (1947)..... 22

93 Cong. Rec. 3953 (1947).....9, 12, 23

93 Cong. Rec. 4258 (1947).....12, 28

93 Cong. Rec. 4317-18 (1947).....12, 25

93 Cong. Rec. 4558 (1947)..... 12

93 Cong. Rec. 5087 (1947)..... 26

93 Cong. Rec. 5088 (1947)..... 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. .....

UNION STARCH & REFINING CO., A CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Union Starch and Refining Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on April 18, 1951.

OPINIONS BELOW.

The Intermediate Report of the Trial Examiner and the Decision and Order of the National Labor Relations Board including the dissenting opinion of two of the five members (R. 30, 58) are reported in 87 N. L. R. B. 779. The opinion and order of the Court of Appeals for the Seventh Circuit is reported in 186 F. 2d 1008.

JURISDICTION.

The opinion and order of the Court of Appeals was entered on February 2, 1951. (R. 306.) The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

QUESTION PRESENTED.

Whether an employee who refuses to become a member of a union holding a valid unionshop contract, but tenders an amount of money equal to the initiation fees and dues, is protected from discharge by the provisos of Section 8(a)(3) of the National Labor Relations Act, as amended.

STATUTE INVOLVED.

Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. A. (1950 Cum. Supp.) Sections 141, *et seq.*[1]

STATEMENT.

Review is sought by this petition of an order of the Court of Appeals for the Seventh Circuit which order granted enforcement of an order of the National Labor Relations Board requiring the Company to cease and desist from certain unfair labor practices and further requiring the Company to take certain affirmative action. (R. 306.) The alleged unfair labor practices arose from the discharge by the Company of three employees. These employees were discharged for failure to become members of a union with which the Company had an admittedly valid union shop contract, that is, a contract requiring *membership* in the Union, after thirty (30) days' employment, as a condition of continued employment. Membership was available to these em-

1. Pertinent sections of the Act are printed in Appendix A of this petition.

ployees upon the same terms and conditions generally applicable to other members of the Union. These employees, however, were unwilling to take the usual steps which are normal incidents of acquiring membership in a labor organization such as attending the Union meeting where their application for membership would be voted upon and taking the usual obligation of membership. In fact, they were entirely unwilling and failed and refused to do anything toward becoming a member other than to tender a sum of money equal to the initiation fees and dues which members of the union were currently paying.[2] (R. 42.)

Upon their discharge, one of the employees, John Ralph, filed charges against the Company and the Union, whereupon complaints were issued by the Regional Director for the Board against both the Company and the Union. Hearings were held before a Trial Examiner who dismissed the complaints on the ground that the charges had not been properly verified in accordance with the Board's Rules and Regulations. (R. 25.) The Board overruled the Trial Examiner (R. 27), and after additional hearings, the Trial Examiner issued his Intermediate Report finding that the Company and the Union had not engaged in unfair labor practices and recommending that the complaints be dismissed in their entirety. (R. 30.) On December 16, 1949, the Board issued its Decision and Order adopting the Trial Examiner's findings of fact with certain minor modifications and additions,[3] but concluding that with respect to these discharges, the Company and the Union were not protected by the provisions of Section 8(a)(3) of the Act. (R. 58.) Two of the five members of the Board dissented, voting to adopt the report of the Trial Examiner. (R. 77.) The Company filed a petition to set aside the Board's De-

2. The facts are set forth in detail in the Trial Examiner's Intermediate Report. (R. 30.)

3. These modifications and additions are in no way important to the decision of this case.

cision ond Order with the Court of Appeals for the Seventh Circuit. (R. 1.) On February 2, 1951, the Court of Appeals entered its opinion and order denying the Company's petition and granting enforcement of the Board's order. From this opinion and order the Company has filed the present petition for a writ of certiorari:

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In refusing to hold that employees must seek membership and comply with the non-discriminatory and uniform procedures imposed by unions as normal incidents of membership before they are protected from discharge by Section 8(a)(3) of the National Labor Relations Act, as amended.

2. In holding that employees who are unwilling and refuse to become members of a Union, but who tender an amount of money equal to the dues and initiation fees are protected from discharge under a valid union shop contract.

3. In holding that Congress, by enacting Section 8(a)(3)(A) and Section 8(a)(3)(B) of the Labor Management Relations Act of 1947, intended to prevent utilization of union security agreements except to compel payment of dues and initiation fees.

4. In stating that the issue was "whether employees who request union membership and tender initiation fees and dues, but fail to comply with other union imposed conditions for acquisition of membership are protected by the Act from discharge under the terms of a valid union security agreement". (R. 307.)

5. In holding that the charges filed with the Board were properly verified in accordance with the Board's Rules and Regulations or that in the alternative the requirement of such verification might be waived.

6. In holding that an employer is "responsible" for the discharge of employees—within the meaning of that term as it is used in Section 10(c) of the Labor Management Relations Act of 1947—where it appears: (1) the discharges were demanded by the Union; (2) the employer made a thorough investigation after such demand and determined that membership in the Union was available on the same terms and conditions generally applicable to other members; and (3) the employer was threatened with a work stoppage unless it acceded to the Union's demand.

7. In holding that it was within the statutory authority and discretion of the Board to order the Company jointly and severally with the Union to make the discharged employees whole for any loss of pay caused by their discharge.

8. In granting enforcement of the Decision and Order of the National Labor Relations Board.

REASONS FOR GRANTING THE WRIT.

I.

The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been but Should Be Settled by This Court.

This case raises for the first time the important question of the limitations placed upon the enforcement of union security agreements by Section 8(a)(3)(A) and Section 8(a)(3)(B) of the Labor Management Relations Act of 1947. In view of the widespread existence of such agreements, the importance of a decision concerning their enforcement is apparent. At the beginning of 1943, more than 45% of all workers under union agreements totalling an estimated six million wage earners, were covered by closed shop or union shop provisions.[4] By 1946, 78% of the

4. Millis & Montgomery, Organized Labor (1945), p. 477.

workers under collective agreements were covered by union security clauses.[5] A recent study of 2,159 collective bargaining agreements covering an estimated 4,000,000 employees discloses that 71% of such agreements contain union security provisions.[6]

The widespread applicability of such agreements is further revealed by the fact that from July 1, 1947 to June 30, 1950, there were 44,836 petitions filed with the National Labor Relations Board requesting elections to authorize the execution of union security agreements,[7] and that about 96% of the elections so held by the Board have resulted in the authorizing of the execution of union security agreements.[8]

The decisions of the Board and the Court of Appeals in this case greatly impair the normal procedure followed by unions under such agreements. Thus, the Union in this case required that applicants for membership take an obligation of membership and attend the union meeting at which their application was to be voted upon as well as tender dues and initiation fees. Such procedures are common in unions everywhere, and it is common knowledge that the mere offer of an amount equivalent to dues and initiation fees is insufficient in order to obtain membership in any union in the United States,[9] yet the Board and the Court of Appeals deny unions the right to require compliance with these established and normal procedures under union se-

5. Millis & Brown, from the Wagner Act to Taft-Hartley (1950), p. 430.

6. Rubenstein, Union Security Provisions in Agreements 1949-50, 71 Monthly Labor Review 224 (1950).

7. Fourteenth Annual Report of the National Labor Relations Board, p. 2; Fifteenth Annual Report of the National Labor Relations Board, p. 3.

8. Fifteenth Annual Report of the National Labor Relations Board, p. 12; Fourteenth Annual Report of the National Labor Relations Board, p. 8.

9. R. p. 38.

curity agreements. Under their decisions unions will no longer be able to utilize union security agreements to maintain a cohesive organization of all the employees, nor can such unions require employees to become members of the union in any real sense of that word. The only advantage which unions will be able to obtain from union security agreements will be the assurance of financial support of all the employees in the bargaining unit. Under this interpretation, union security agreements provide no "union security" whatever, in the sense in which that term is commonly understood, but such agreements are reduced to the level of "support money" agreements.

Such a decision uprooting non-discriminatory existing union practices and effectively destroying union security certainly warrants review by this Court to determine its soundness. Upon such review the Company urges that the court will find that the decision of the Court of Appeals is erroneous for the reasons which are set forth in the next two sections of this brief.

II.

The Decision of the Circuit Court of Appeals Erroneously Interprets the Provisos to Section 8(a)(3).

Section 8(a)(3) of the National Labor Relations Act, as amended, permits unions and employers to make agreements requiring *membership* as a condition of employment.[10] Provisos A and B of this Section place certain restrictions on the enforcement of such agreements. They provide:

> "*Provided further*, that no employer shall justify any discrimination against an employee for non-membership in a labor organization. (A) If he has reasonable grounds for believing that such membership was

10. See Appendix A, page 19.

> not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

By the language in Proviso (A) Congress recognized that certain terms and conditions could be imposed on admission into membership in a union as long as they were non-discriminatory. A normal interpretation would construe Proviso (B) so as to preserve this intent and give effect to both provisos. However, the Court of Appeals refuses to give any effect to Proviso (A) and makes Proviso (B) the governing provision in cases of discharges under union security agreements.

The Court of Appeals held that—

> "proviso (A) protects from discharge for nonmembership in the contracting union any employee to whom membership was not available for some discriminatory reason, and that proviso (B) protects the employee who tenders the requisite amount of dues and initiation fee and is denied membership for any other reason, even though that reason be nondiscriminatory."

It is quite obvious that if proviso (B) protects from discharge for non-membership any employee who is denied membership for *any* reason—whether it be a discriminatory or non-discriminatory reason—other than the failure to tender dues and initiation fee, then proviso (B) serves to carry out the complete purpose of Congress as interpreted by the Court of Appeals. Under this interpretation proviso (A) has no effect whatever and is completely inoperative and superfluous.

In reaching this result the Court of Appeals has violated established and basic rules of statutory construction. It is

familiar law that each section of a statute must be construed with every other section, and interpretation may not be confined to the one section to be construed. It is also well established that a statute should be construed so that effect is given to all its provisions so that no one part will be inoperative or superfluous. This court has held[11]—

> "* * * the process of interpretation also misses its high function if a strict reading of a law results in the emasculation or deletion of a provision which a less literal reading would preserve."

In ignoring such rules, the Court of Appeals not only did not have the support of congressional history, but reached a result directly contra thereto. Thus, Senator Taft emphasized the distinction between the two provisos when speaking in the Senate on April 23, 1947. He said (93 Cong. Rec. 3953):

> "In the second place, we have proposed a proviso in the case where a man is refused admittance to a union, when an employer employs a non-union man, and during the first 30 days of his employment he goes to the union and says, 'I want to join the union', but the union refuses to take him. It is provided in such a case the employer shall not be compelled to discharge the man simply because the union will not let him join the union *on the same terms and conditions as any other member.* In effect, we say, 'If you are going to have a union shop, then you must have an open union'. You cannot say to people, 'We have a closed union shop, and we are not going to let you in under any circumstances'.
>
> "The bill further provides that if a man is admitted to the union and *subsequently is fired from the union for any reason other than non-payment of dues, then the employer shall not be required to fire that man.* In other words what we do, in effect, is to say that no one can get a free ride in such a shop. That meets one of the arguments for the union shop. The employee has to pay the Union dues. But on the other hand, if the

11. *Markham* v. *Cabell*, 326 U. S. 404 (1945).

union discriminates against him and fires him from the union the employer shall not be required to fire him from the job. During the testimony we heard of a case in which a union member saw a shop steward hit a foreman. That union member was called to testify in court, and he testified that he saw the shop steward hit the foreman. Subsequently, the union called him before their board for discipline, and said that for him to testify as he did was unfair to the union, although he had been subpoenaed to testify in court and sworn. Thereupon he was fired from the union, and under the union agreement the employer would have to fire him. Under this bill the employer would not have to fire that man unless he did not pay his union dues.

"I think the justice of such an arrangement should be clear as I have said, either we should have an open shop or we should have an open union. I do not believe we should permit the complete exclusion from any industry of a man who wants to work in that industry, and whom the employer wants to employ, and who is perfectly competent to work there, simply because the union says, 'we do not want you and we will not let you in,' or 'we are going to fire you from the union because we do not like the way you act.'" (Emphasis supplied.)

Senator Taft states that in regard to admission into membership in a union the test is whether membership was available on the same terms and conditions generally applicable to other members. In the case of *expulsion* from the union on the other hand, the test is whether the reason for expulsion was one other than non-payment of dues. He thereby carefully distinguishes between the primary application of the two provisos. The same distinction was made by Senator Taft on at least two other occasions when speaking before the Senate.[12] This distinction was also made by the Senate Committee on Labor and Public Welfare in which the language of the present provisos to Section

12. See Appendix B, pages 25-28.

8(a)(3) originated.[13] Certainly as stated by the court below the "statements of those who supported the legislation and secured its passage will be accepted in determining its meaning."[14]

That Congress did not intend, by the enactment of provisos (A) and (B), to reduce union security agreements to the level of "support-money" agreements is conclusively demonstrated by consideration of a statement made by Senator Taft on the Senate floor on May 9, 1947, where he discussed a support money agreement provided for in an award in a Canadian labor arbitration case. He said:

> "Mr. President, while I think of it, I should like to say that the rule adopted by the committee is substantially the rule now in effect in Canada. Apparently by a decision of the justices of the Supreme Court of Canada in an arbitration case,[15] the present rule in Canada is that there can be a closed shop or union shop, and the union does not have to admit an employee who applied for membership, but the employee must, nevertheless, pay dues, even though he does not join the union.
>
> "If he pays the dues without joining the union, he has the right to be employed. That, in effect, is a kind of tax, if you please, for union support, if the union is the recognized bargaining agent for all the men, *but*

---

13. See Appendix B, pages 22-23.

14. R. page 311. The colloquy between Senator Pepper, Senators Taft and Ball, cited by the Court in footnote 1 of its opinion (R. page .....)does not express an intent contra to the one above. The particular question which the Senators were discussing was a right of a union to select its own members, not the right of the union to secure an employee's discharge for non-membership in the union. Moreover, Senator Taft did not say anything inconsistent with his more complete statements already cited. The Committee reports cited by the Court repeat the statutory language and therefore do not aid in determining the intent of Congress.

15. Senator Taft's reference to a Canadian decision is to the arbitration between *Ford Motor Company of Canada (Windsor, Ont.) and the UAW-CIO*, decided January 29, 1946, 1 Labor Arbitration Reports 439, 17 LRRM 2782.

there is no constitutional way by which we can do that in the United States." (Emphasis supplied.) 93 Cong. Rec. 5088.

It is beyond belief that Congress intended a result which the sponsor of the Act believed to be unconstitutional.

From the foregoing, it appears that the court has ignored accepted rules of statutory construction and the clearly expressed intent of Congress, and in doing so has deprived unions of all benefits which might flow from union security agreements other than the assurance of a full treasury. Yet, Senator Taft, one of the chief sponsors of the amendment, made the following statement before the Senate on April 23, 1947 (93 Cong. Rec. 3953):

> "Mr. President, I have hesitated to support the complete outlawing of the union shop, because the union shop has been enforced in many industries for many years, and to upset it today probably would destroy relationships of long standing and probably would bring on more strife than it would cure. I think there are abuses. I mentioned three or four during the course of the hearing. With respect to abuses of that kind, we have attempted to deal with them by this proviso."[16]

We have already seen that Senator Taft believed that the method adopted by Congress to prevent abuses under union security agreements did not prohibit requiring an employee to comply with non-discriminatory procedures in order to obtain membership. There was no intention to deprive unions of the advantage of using union security agreements to maintain a cohesive and functioning organi-

16. The abuses which Senator Taft had in mind were as follows: (1) denial of membership in unions to negroes (93 Cong. Rec. 4317), (2) expulsion of employees from the union because they testified against a union steward truthfully under oath (93 Cong. Rec. 4258), (3) expulsion from a union of employees who refused to buy lottery tickets (93 Cong. Rec. 4558), (4) expulsion from a union of employees who refused to pay a special assessment to finance a cause in which they did not believe (93 Cong. Rec. 4258).

zation through non-discriminatory procedures for admission into membership since this could be done and still correct the abuses that existed.

The Company submits that since the decision of the Court of Appeals violates basic principles of statutory construction and is contrary to the expressed congressional intent, it is clearly erroneous and should be reversed.

III.

The Court of Appeals Departed Sharply from the Accepted and Usual Course of Judicial Proceedings in Deciding This Case on an Issue Which Is Completely Different from the Issue Considered and Decided by the Board.

The Court of Appeals states that the issue in this case is (R. p. 307):

> "* * * whether employees who request union membership and tender initiation fees and dues, but fail to comply with other union imposed conditions for acquisition of membership, are protected by the act from discharge under the terms of a valid Union Security Agreement."

However, the Board in stating the issue, does not state that the case involves employees who request membership.[17] That it was immaterial to the Board's decision whether the employees were willing to become members or had requested membership is demonstrated by the fact that the Board failed to make a finding that the three employees were willing to become members, or that they requested membership at the time they tendered an amount equal to dues and

17. The Board's statement of the issue is as follows (R. p. 61): "On these facts, the issue before us is whether an employee who tenders to a union holding a valid union shop contract an amount equal to the initiation fees and dues thereby brings himself within the protection from discharge contained in the Provisos of Sec. 8(a)(3) and 8(b)(2) of the amended Act."

initiation fees, or that the Company had reasonable grounds for believing that the employees were so willing and had made such a request.[18]

The basis of the Board's decision is disclosed by the following statement which appears in its Decision and Order:

> "The employees *were* willing to comply with the only term or condition for membership which we think can, under the provisos, legally be enforced by discharge—the tender of the periodic dues and the initiation fees uniformly required."

And again in footnote 17 the Board sets forth in italics the following statement by Senator Taft to support its decision (R. p. 66):[19]

> "If (an employee) pays the dues without joining the union, he has the right to be employed."

While it is therefore clear that the Board decided that even employees who are unwilling to become members and who do not request membership are protected from discharge as long as they tender amounts equal to dues and initiation fees, it is also clear that such a decision is erroneous. Section 8(a)(3) provides that nothing in the Act shall prevent an "employer from making an agreement with a labor organization * * * to require as a condition of *employment* membership therein * * *." (Emphasis supplied.)[20] To be protected from discharge by Proviso B an employee must be *denied* membership. It is elementary that for anything to be denied, it must be sought, and

18. In the absence of such findings by the Board, the controlling finding is that made by the Trial Examiner that "the two Ralphs and Mary Rawlings, the record amply demonstrates, were entirely unwilling to become members of the respondent union. * * *" (R. p. 42.)

19. The full statement by Senator Taft is set forth above at page 12.

20. See Appendix A, page 19.

therefore by the language of Proviso B, Congress expressed an intent that the employee must be willing to become a member of a labor organization.

Since the Board's decision was erroneous, it should have been set aside by the Court of Appeals. Certainly the Court of Appeals had no right to affirm the Board on an entirely different basis and issue. Thus, it has been stated by this Court in the case of *Securities Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80 (1943) as follows (Pages 87-88):

> "Since the decision of the Commission was explicitly based upon the applicability of principles of equity announced by courts, its validity must likewise be judged on that basis. *The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.*
>
> "In confining our review to a judgment upon the validity of the grounds upon which the Commission itself based its action, we do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct 'although the lower court relied upon a wrong ground or gave a wrong reason.' *Helvering* v. *Gowran*, 302 U. S. 238, 245, 82 L. ed. 224, 229, 58 S. Ct. 154. The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate. But it is also familiar appellate procedure that where the correctness of the lower court's decision depends upon a determination of fact which only a jury could make but which has not been made, the appellate court cannot take the place of the jury. Like considerations govern review of administrative orders. If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment

cannot be made to do service for an administrative judgment. For purposes of affirming no less than reversing its orders, an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency." (Emphasis supplied.)

As noted above, the Board made no finding that these employees sought or requested membership or that they were willing to become members at the time herein involved, or that the Company had reasonable grounds for believing that they had requested or that they were willing to become members.

There is no evidence in the record to support the issue stated by the Court of Appeals. The statement of the issue presupposes facts directly in conflict with the findings of fact made by the Trial Examiner and adopted by the Board. The issue, as stated by the Court of Appeals, is entirely different from the issue upon which the Board based its Decision and Order. This disregard of the facts of this case can only be explained by the failure of the Court of Appeals to give effect to that section of the Taft-Hartley Act which provides that:

> "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive."[21]

Since the affirmance of the Board's decision has the effect of destroying all union security and affects—substantially and adversely—the administration of thousands of collective bargaining agreements,[22] the violation of established principles of judicial review in order to affirm such a decision justifies review by this Court.

---

21. 61 Stat. 148, 29 U. S. C. (Supp. III) Sec. 160 (e).

22. The importance of such a result and of the decision in this case is fully discussed above at pages 5-7.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

HARRY T. ICE,

.....

Attorney for Petitioner.

ROSS, MCCORD, ICE & MILLER,
Indianapolis, Indiana,
Of Counsel.